



COVERSHEET

Minister	Hon Michael Wood	Portfolio	Workplace Relations and Safety
Title of Cabinet paper	Requiring COVID-19 vaccination for work through Government mandates and employer requirements	Date to be published	1 April 2022

List of documents that have been proactively released		
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22 November 2021	<i>Requiring COVID-19 vaccination for work through Government mandates and employer requirements</i> <i>CAB-21-MIN-0495</i>	<i>Cabinet Office</i>

Information redacted

YES

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Some information has been withheld for the reasons of Legal professional privilege.

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Office of the Minister for Workplace Relations and Safety

Cabinet

Requiring COVID-19 vaccination for work through Government mandates and employer decisions

Proposals

- 1 This paper seeks agreement to:
 - 1.1 Mandate vaccination for work done by:
 - 1.1.1 Constabulary (sworn members), recruits and authorised officers of the New Zealand Police, and
 - 1.1.2 The Armed Forces and civilian staff (including contractors) of the New Zealand Defence Force, and
 - 1.2 Introduce a vaccination assessment tool to help PBCUs determine whether it is reasonable to require vaccination for work.

Relation to government priorities

- 2 This paper concerns the Government's COVID-19 response.

Summary

- 3 On 26 October 2021, Cabinet agreed to amend the COVID-19 Public Health Response Act 2020 (COVID Act) to allow vaccination or testing to be required for work on public interest grounds [CAB-21-MIN-0436]. The draft COVID-19 Response (Vaccinations) Legislation Bill defines public interest as including (without limitation):
 - 3.1 ensuring public safety,
 - 3.2 maintaining trust in public services,
 - 3.3 supporting the continued provision of lifeline utilities or other essential services, and
 - 3.4 maintaining access to overseas markets.
- 4 This definition of public interest needs to be read within the overall context of our public health response to COVID-19. This approach recognises that vaccination is a key tool to reduce COVID-19 infection and transmission and, in the workplace context, can mitigate adverse effects of exposure and outbreaks.

- 5 Cabinet invited the Minister for the Public Service, the Minister for Economic and Regional Development and the Minister for Workplace Relations and Safety to consider whether to mandate vaccination for any other types of work.
- 6 Cabinet also agreed to create a clear, simple, easy-to-use risk assessment process for employers. This would be available to persons conducting a business or undertaking (PCBUs)¹ to use where their work is not covered by a Government vaccination mandate. It would help them decide whether it is reasonable to require vaccination or testing for work.

Mandating vaccination for some New Zealand Police and New Zealand Defence Force personnel

- 7 Following further discussion with Ministers, agencies, and stakeholders, I consider there is clear public interest in ensuring continuity of the services provided by Police and the New Zealand Defence Force (NZDF), both of which are essential for public safety, national defence and crisis response. I recommend mandating vaccination for:
 - 7.1 New Zealand Police: constabulary (sworn) members of Police, Police recruits and authorised officers, and
 - 7.2 NZDF: the Armed Forces (ie uniformed members of the NZDF) and civilian (including contracted) staff.
- 8 In addition to it being in the public interest to mandate vaccination for such work, this will contribute to our overall public health response in the following ways:
 - 8.1 A fully-functioning Police service ensures our communities are safe and feel safe, particularly when interacting with Police, and contributes to public trust and confidence in Police's commitment to maintaining law and order and playing a key role in our COVID-19 response. Police also interact daily with the general public, including vulnerable members of our community who are less likely to be vaccinated for a range of reasons.
 - 8.2 The NZDF performs a unique and critical function for New Zealand, namely defending New Zealand, as well as providing any public service and aid to the civil power in times of emergency. This includes maintaining regional boundaries and ensuring MIQ facilities are secure. Many NZDF staff both live and work in close quarters on bases and in barracks, where bathroom and dining facilities are shared amongst large groups of people. An outbreak in these settings could affect the NZDF's operational capability to respond to emergencies, including as part of our COVID-19 response.

¹ Under the Health and Safety at Work Act 2005, a PCBU must ensure the health and safety of its workers, any other workers it influences or directs, and any other people in the workplace.

- 9 I therefore consider mandating vaccination for some Police and NZDF personnel to be in line with the purposes of the COVID Act (for example mitigating the potential adverse effects of an outbreak) as well as being in the public interest.
- 10 This mandate will cover approximately 10,000 constabulary staff, 240 FTE Police recruits, and 340 FTE authorised officers employed by Police. It will cover all 9,685 Regular Force and 2,887 Reserve Force members of the Armed Forces, as well as up to 4,000 civilian NZDF workers (2,990 FTE employees and up to 1,000 contractors). Both organisations have indicated that a significant proportion of these personnel are already vaccinated, particularly the Armed Forces.
- 11 I do not propose that this new Order cover the entire Police workforce. While Police has highlighted that its uniformed staff interact regularly with other workers, and have requested that the mandates cover all their workers, I have deliberately kept the scope narrow to ensure we only require vaccination where there is a strong and defensible public interest in requiring vaccination as part of our overall public health response. I consider that any residual risk in relation to the broader workforce can be managed through internal risk assessment processes.
- 12 An Order giving effect to this could be prepared by 13 December 2021. This Order can only be made after the COVID-19 Response (Vaccinations) Legislation Bill is passed, the introduction of which we are also discussing today.
- 13 While there is widespread interest in mandating vaccination for other work in the public interest, after analysis and consultation between Ministers, I do not think it is currently necessary to mandate vaccination for any other workforces.

Tool to support workplace decisions on vaccines

- 14 Vaccines are the best tool that we currently have available to manage COVID-19 risks in the workplace. PCBUs can currently require vaccination if a risk assessment indicates that this is a reasonably practicable measure to mitigate risks.
- 15 However, many PCBUs have indicated they lack the public health knowledge or resources to be able to carry out a risk assessment and be confident that the resulting actions taken meet legal requirements, and properly manage COVID-19 risk.
- 16 To address this, a simple and easy-to-understand vaccination assessment tool has been created to provide certainty to PCBUs about whether requiring vaccination is reasonable.
- 17 The tool specifies four key factors, at least three of which must be met, before it would be reasonable for a PCBU to consider requiring vaccination. The Ministry of Health has provided input to the design of the tool.

- 18 The proposed tool will be contained in regulations under the COVID-19 Act, which can be made after the COVID-19 Response (Vaccinations) Legislation Bill is passed. The tool is designed to be applied to particular roles within a business (rather than across an entire workforce) to align with the current approach under the Health and Safety at Work Act 2015 (HSWA).
- 19 Use of the tool will be optional, and PCBUs will still be able to undertake their own, bespoke, risk assessment processes should they wish (in accordance with HSWA). The tool will not override any risk assessment processes that have already been undertaken by a PCBU.
- 20 The purpose of the tool is to provide PCBUs with more certainty. To ensure that, a PCBU's decision to use the tool instead of another risk assessment process (or vice versa) will be protected from legal challenge. However, PCBUs must still act reasonably, and the employment duty of good faith continues to apply.
- 21 BusinessNZ considers that it is not clear that following the process set out in the vaccination assessment tool provides assurance that a requirement to be vaccinated will be considered reasonable if challenged. On balance, I consider the tool provides a sufficient degree of legal certainty alongside protections for workers.
- 22 The New Zealand Council of Trade Unions (CTU) considers that a higher degree of engagement and, greater clarity of obligations, should be required when applying the simplified process set out in vaccination assessment tool, than would be required under HSWA.

Background

- 23 On 18 October 2021, Cabinet confirmed that the elimination strategy will transition to a minimisation and protection approach. As part of this strategy, we have announced the COVID-19 Protection Framework, which lays out our domestic response to COVID-19 as part of a new strategy for a highly vaccinated population. This framework offers greater freedoms to those who are vaccinated, while minimising harm from COVID-19, and protecting those who are most vulnerable.
- 24 Minimisation means that we are aiming to keep the spread of COVID-19 at as low a level as possible by containing and controlling any outbreaks. It also means that there are likely be some cases in the community on an ongoing basis. Protection means that we will protect people from the virus, with vaccination, management, and a response that focusses on minimising the significant health impacts of the virus.
- 25 No country has transitioned from an elimination strategy to re-opening in a way that does not lead to an increase of COVID-19 cases in the community. It is within this context that workplaces are considering vaccination among the suite of controls they can use to eliminate or mitigate risks of COVID-19 exposure and transmission at work.

The relationship between vaccination mandates and employer decisions

- 26 While we want to achieve the highest possible vaccination rate in workplaces, not all work across our economy will require vaccination.
- 27 To date, we have mandated vaccination for some work on public health grounds. Where we have taken these decisions, employers do not have the discretion to decide that unvaccinated workers can do that work. This includes work in MIQ and border settings, as well in the education and healthcare sectors and in prisons. We have also agreed to require vaccination for work in settings where CVCs must be used to operate, or operate with fewer restrictions, under the COVID-19 Protection Framework [CAB-21-MIN-0436]. Cumulatively, these mandates cover approximately 30% of the workforce (this figure is likely to be a slight over-estimation).
- 28 These mandates reflect that these workforces each face particular and different challenges posed by COVID-19 in that they work with populations who are either unable to be vaccinated (education and health), are at increased risk of severe illness from COVID-19 (health and correctional facilities), or where outbreaks have occurred overseas (correctional facilities).
- 29 For other work, PCBUs can require vaccination on health and safety grounds, or where a third party has made this a condition (eg to access their premises to work). This means that for work not covered by a vaccination mandate, PCBUs have the discretion to decide whether certain work requires vaccination. WorkSafe has provided guidance on how these decisions can be made.
- 30 The feedback I have had from unions and business is that they want further clarity and certainty. Workers want to know what their rights are, and employers want assurance about the legality of the decisions they make. Stakeholders from across various sectors have also expressed a desire for the Government to mandate vaccination for certain work, as it may be more appropriate for the Government to make these decisions than individual employers.

Identifying how government can best support the wider economy to determine vaccination requirements

- 31 In considering the role of COVID-19 vaccination in workplaces, on 26 October 2021, Cabinet agreed [CAB-21-MIN-0436]:

<i>Government vaccination mandates</i>	To mandate vaccination for work in any setting where a COVID-19 Vaccination Certificate (CVC) must be required for members of the public.
	To amend the COVID Act to support future vaccination or testing mandates for work where there is strong public interest in doing so.
	To invite the Minister for the Public Service, Minister for Economic and Regional Development and Minister for Workplace Relations and Safety to consider whether any additional work should be subject to vaccination mandates.

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	To allow vaccination to be required for work where the Director-General of the Ministry for Primary Industries has determined that this is necessary to facilitate access for specific products or classes or products to specific overseas markets.
	To strengthen the legal framework for work vaccination or testing requirements by amending the COVID Act to create vaccination-related duties and obligations on workers and employers, create record-keeping rules, and authorise exemptions and exceptions from vaccination requirements.
<i>Employer decisions to require vaccination</i>	To prescribe a risk assessment process, with clear, simple and easy to use criteria, that employers and persons conducting a business or undertaking (PCBU) must follow when determining whether certain work requires vaccination or testing.
	To require employers and PCBUs to consult workers and their representatives when using the above risk assessment process.
	To invite the Minister for Workplace Relations and Safety to report back to Cabinet on the proposed criteria to be used in the risk assessment process as soon as possible.
<i>Employment law changes</i>	To require employers to provide reasonable paid time for employees to be vaccinated against COVID-19, with breaches of this enforced by Labour Inspectors.
	To require employers to provide a minimum of four weeks' paid notice in situations where unvaccinated employees' employment agreements are terminated because they are doing work that requires vaccination, and there are no alternatives (eg redeployment) that would allow them to continue working for their employer without being vaccinated.
<i>WorkSafe funding</i>	To provide WorkSafe with \$4.373 million of funding for 2021/22 to carry out their COVID-19 compliance and enforcement role, charged against the COVID-19 Response and Recovery Fund.

32 The Attorney-General and I were given Power to Act in relation to several decisions relating to the above. We have since agreed:

32.1 The COVID Act should be amended to allow the Minister for Workplace Relations and Safety to make orders to mandate vaccination for certain work (or testing, if this is part of our strategy in the future), with similar requirements as currently exist for COVID-19 orders,

32.2 The COVID Act should be amended to allow the prescribed risk assessment process for employers and PCBUs to be made through regulations on the recommendation of the Minister for Workplace Relations and Safety.

COVID-19 Response (Vaccinations) Legislation Bill

33 The COVID-19 Response (Vaccinations) Legislation Bill has been drafted to give effect to our decisions on 26 October 2021 [CAB-21-MIN-0436], as well as a range of other decisions relating to our transition to the COVID-19 Protection Framework. As a separate item, we are deciding whether to introduce this Bill today.

- 34 In consultation with the Minister for COVID-19 Response, I have made several decisions on matters that have arisen during drafting, as authorised by Cabinet. These are detailed in **Appendix 1**.
- 35 In this paper, I seek approval to use the authorising provisions in this Bill, once it is passed, to create two secondary legislative instruments:
- 35.1 An order mandating vaccination for some work done by the New Zealand Police and the New Zealand Defence Force, and
 - 35.2 Regulations prescribing a tool for PCBUs to use when deciding whether it is reasonable to require vaccination for work (where an order mandating vaccination does not apply).

Government vaccination mandates

- 36 Together with the Minister for the Public Service and the Minister for Economic and Regional Development, I have considered a wide range of work for potential mandates. This includes work involving contact with vulnerable communities in the social and community services sector, and other key services such as lifeline utilities, transport and freight, wider emergency services, and the building and construction sector.
- 37 I am conscious that workplace vaccination mandates need to be grounded in strong public interest arguments as part of our overall public health response to COVID-19. Given public health advice is that it is not justified to mandate vaccination for any other workforces at this stage on public health grounds alone, Legal professional privilege [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- 38 Under current circumstances, and following further discussion with Ministers, agencies, and stakeholders, I consider that vaccination mandates can be justified for:
- 38.1 Constabulary (sworn members), Police recruits, and authorised officers of the New Zealand Police, and
 - 38.2 the Armed Forces (ie uniformed members of NZDF) and civilian (included contracted) NZDF staff.
- 39 I have determined that there is clear public interest in ensuring continuity of the services provided by Police and the NZDF for our overall COVID-19 response, and which are also essential for public safety, defence and crisis response. The consequences and potential adverse effects of COVID-19 infection and transmission among the Police and NZDF are more severe than for other types of work, even if the likelihood of infection and transmission may be similar to other workplaces for which a mandate does not apply.

- 40 I only propose mandating vaccination for part of the Police workforce. This is similar to the approach taken to work at the border, but could be seen as inconsistent with the approach towards health and education workforces in places like hospitals and schools, and work in prisons, where mandates are across all who work in those settings.
- 41 Police's frontline workforce can be characterised as constabulary, recruits and authorised officers (non-constabulary staff who can exercise limited constabulary powers). However, Police has noted there is significant interaction between frontline and other staff, who often work in the same premises.
- 42 While auxiliary functions are important to support frontline operations, the constabulary and authorised officers are particularly trained to deal with a wide range of situations. They must therefore be ready to respond to critical incidents and emergencies, including the deployment of recruits in some circumstances. In some cases, this response is provided by small, specialised units with limited redundancy built in.
- 43 Conversely, the NZDF is a blended workforce, consisting of military personnel, civilian staff and contractors. It operates flexibly, with military personnel able to move quickly between support and frontline roles in response to an emergency, and with civilian staff backfilling in support.
- 44 There is also interaction between armed forces, civilians, contractors and other third parties on defence property, for example, bases with residential capacity. For these reasons, it is more appropriate that all NZDF work, whether by the Armed Forces or civilian staff, is subject to a vaccination mandate.
- 45 I consider that the broader supporting functions of the Police can be managed internally through business continuity planning and other processes to ensure the appropriate support capacity can be provided to frontline response work.
- 46 It will also remain an option to all PCBUs, including Police, to undertake health and safety assessments or use the vaccination assessment tool proposed in this paper to identify further types of work for which vaccination should be required at the entity level.

New Zealand Police

- 47 Police have a key role in maintaining public safety and enforcing laws. They are part of our national security architecture and play a role in our emergency management and crisis responses. Additionally, their crime prevention and community support roles frequently involve working with communities and being in contact with vulnerable members of the public.
- 48 A fully-functioning Police service ensures our communities are safe and feel safe, particularly when interacting with Police (eg as they enforce rules of the Alert Level and Protection Frameworks). It also contributes to public trust and

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confidence in Police's commitment to maintaining law and order and playing a key role in our COVID-19 response.

- 49 The current COVID-19 Public Health Response (Vaccinations) Order 2021 is deemed to cover all Police staff who work in schools, such as Police School Liaison Officers, and Police staff who work alongside health practitioners. For example, road policing teams who work closely with paramedics at accidents, and custodial staff working with Police doctors and mental health practitioners in Police cells and at health facilities.
- 50 Under the current Vaccinations Order, affected workers are required to have their first dose by 29 November 2021, with a second dose required by 14 January 2022.
- 51 The proposed vaccination mandate would further encompass:
- 51.1 All constabulary, which comes to just over 10,000 police staff. While constables are generally in frontline roles, this will include those who may not currently be, as all constabulary are eligible for immediate deployment to the frontline. Generally, there is not time to vaccinate officers ahead of redeployment to other areas of work.²
- 51.2 Police recruits training at the Royal New Zealand Police College (RNZPC), approximately 240 FTE. This will address the risk that recruits are unable to be immediately deployed following graduation due to vaccination status. It also acknowledges that recruits can be deployed for initial contact and interviews of possible witnesses in major investigations and foot patrols as part of preventative work.
- 51.3 All authorised officers employed by Police, approximately 340 FTE. These staff have limited constabulary powers relevant to their duties and are employed in a range of similar roles, including in custody suites, and serious and organised crime teams. Significantly higher rates of sick leave by unvaccinated authorised officers due to COVID-19 would directly impact Police's ability to maintain policing services and public safety, as constabulary staff would need to be redeployed to offset authorised officer absences, or police investigations would be delayed or abandoned.
- 52 Police support public safety in many forms. On an average day, Police stop 2,136 vehicles, open 370 family harm investigations, conduct 66 firearm assessments, attend 168 traffic crashes, conduct 4,426 breath tests and resolve 515 charges by prosecution etc. While this is predominantly carried out by constabulary staff, non-constabulary police employees also deliver some of these public facing services.
- 53 Police are also a key enforcement agency in our COVID-19 response. Police respond to reports of breaches of COVID-19 restrictions, which can involve

² For example, when the 2019 mosque incident occurred, 2,500 Police staff from around New Zealand were deployed to Christchurch within 24 hours.

close contact with people who have COVID-19. Police also patrol regional boundaries and carry out prevention activities.

- 54 Frontline policing is a vector of COVID-19 transmission into vulnerable communities and people's homes, where the affected individuals may have no choice about their contact with Police staff. The reverse is also true, with frontline Police at risk of contracting COVID-19 in the course of their work due to the levels of interaction they have with the public.
- 55 Unvaccinated individuals are more likely to contract and transmit COVID-19 and become more seriously ill, or require longer time in isolation if exposed. This means that unvaccinated Police staff are likely to have higher levels of sick leave. Significantly higher rates of sick leave across Police due to COVID-19 would directly impact Police's ability to maintain policing services and public safety.
- 56 If a specialist unit or entire workforce at a regional police station was exposed or infected with COVID-19, Police would look to redeploy staff from other service groups and regions. Where redeployment is possible, such as to a regional Police station, this would impact overall service delivery in all impacted areas.
- 57 In some instances, such as asset recovery units and the National High Tech Crime Group, the technical skills and security clearances required mean staff cannot be redeployed to cover constabulary and authorised officer absences and investigations would be delayed or abandoned. If situations such as these occur, they could result in reduced trust and confidence in Police.
- 58 Existing controls such as the use of PPE will not reduce the risk of transmission sufficiently. Vaccination is therefore a critical tool to minimise the risk that the constabulary, recruits and authorised officers contract COVID-19 and become severely ill and are absent from work for extended periods.
- 59 In addition, a vaccination mandate for the constabulary, recruits and authorised officers will provide the community with greater confidence that it is safe to interact with and call on Police for assistance when needed. It is also needed to ensure that Police can enter any premise that requires a COVID-19 Vaccination Certificate.

Current vaccination levels for the constabulary

- 60 As at 18 November 2021, 89.4% of Constabulary staff have received at least one dose, with 80.8% now fully vaccinated. There are 1,066 constabulary staff who have either not received at least one dose of the vaccine, or are yet to update their vaccination status using Police's online reporting tool.
- 61 As is the case nationally, it is likely that within Police there are regions or work groups with significantly higher percentages of unvaccinated staff. If this occurs and staff refuse to be vaccinated, it could impact the ability to maintain the capacity required to sufficiently deliver day-to-day policing services in

some areas, as well as risk an insufficient capability to respond to significant incidents.

Risk of staff loss due to a vaccination mandate

- 62 The converse risk of requiring vaccination is that if a substantial number of workers refuse to become vaccinated, there may not be sufficient ability to backfill positions to ensure service continuity in the short-term. This reflects the current challenges in the recruitment market and the lead in time to recruit and train constabulary staff, as well as capacity within the RNZPC. For this reason, I have suggested a date in mid-January 2021 for a first dose deadline, to avoid any workforce issues over the crucial festive period when we need a much higher level of Police activity for the COVID-19 response.
- 63 However, I note that a high rate of vaccination has been achieved amongst MIQ and border workers, as well as in the Armed Forces (discussed in further detail below). In Victoria, Australia, 43 police or protective service officers were stood down in October for not meeting vaccination requirements, which is a very small fraction of the approximate 22,000 officers (though it is not known how many may have resigned voluntarily in light of the Victorian Government mandate).
- 64 New Zealand Police advise that if a high vaccination rate is achieved, ie 98% or higher, they expect to have the capacity, through normal recruitment processes, to fill any positions made vacant by those electing to have their employment terminated rather than be vaccinated.
- 65 If vaccine refusal rates are higher, the Police workforce may fall slightly under target capacity until recruitment can rebuild staff numbers. In this situation Police would need to manage its operating model and recruitment plans to mitigate any effects on capability and return to full strength in as short as possible timeframe.
- 66 My intended approach to exemptions is outlined in more detail later in this paper. New Zealand Police supports similar exemption provisions as in the current Vaccinations Order.
- 67 The Police Association and the Police Leaders Guild will support a Police vaccination mandate, if that is the decision of the Government. These two groups represent over 99% of Police staff.

New Zealand Police comment

- 68 New Zealand Police maintains that all police work should require vaccination on the following grounds:
- 68.1 To address the risk to public safety if policing services are impacted due to non-constabulary Police workers contracting COVID-19, noting that unvaccinated individuals are more likely to be ill and to transmit the virus, resulting in higher rates of sick leave use and spread among colleagues. For example, if communication centre staff are impacted,

Police's ability to deploy to address emergency and public safety incidents would be significantly impacted and could result in reduced trust and confidence in policing.

- 68.2 To address the risk of not having a sufficient number of trained RNZPC staff available, who are a mixture of constabulary and non-constabulary employees. An outbreak at the RNZPC will result in delays to training new recruits and affect staff deployability. Over time, the level of policing service provided would be significantly degraded if the RNZPC was unable to operate.
- 69 A vaccination mandate for all work the Police considers to be essential, in addition to the constabulary, is considered by New Zealand Police to also be in the public interest due to the relevant workers' substantial role in directly supporting frontline policing capacity and capabilities.
- 70 An outbreak or widespread isolation requirements amongst these groups could risk the overall effectiveness of Police response to major or significant incidents.

New Zealand Defence Force

- 71 Pursuant to section 5 of the Defence Act 1990, the NZDF performs a unique and critical function for New Zealand, namely defending New Zealand, and protecting her interests both in New Zealand and overseas.
- 72 The NZDF plays a key role in our overall public health response to COVID-19. The NZDF assists Police at regional boundaries and supports MBIE to resource MIQ facilities. The NZDF is also tasked with providing any public service and aid to the civil power in times of emergency. Recent examples of the functions the NZDF provide include providing assistance to Papua New Guinea with its COVID-19 response, supporting the evacuation of Afghan civilians from Kabul.
- 73 All of these functions require mitigation of the risk of COVID-19 to the extent possible. The NZDF's work requires overseas travel and interaction with people at higher risk of transmitting COVID-19. In recognition of the health and safety risks involved in the work the NZDF may be called on to do, the Chief of Defence Force has established that the baseline vaccination requirements for the Armed Forces includes COVID-19 vaccination. However, this decision is currently subject to judicial review.
- 74 There is also a real risk to the NZDF's capacity and capability to respond to specific events if part of the workforce is incapacitated by a COVID-19 outbreak or isolation requirements. Recently, a number of Navy divers contracted COVID-19 (despite being fully vaccinated) during a training exercise offshore. Given the medical impact of the virus, they are currently stood down from diving for six months.
- 75 Although the NZDF still has the ability to perform diving operations with careful management of its resources, further spread of the virus amongst

operational units such as divers could seriously impact on the ability of the NZDF to undertake search and rescue operations. Similarly, the introduction of COVID-19 to the limited number of flight crews could impact the NZDF's ability to do search and rescue missions, or to respond to a humanitarian aid mission.

- 76 Given the nature of the NZDF bases, where a large number of workers (both armed forces and civilians) live and work in a confined area, transmission or close contact amongst a large number of people may be more likely than in other workplaces or household settings. The NZDF also relies on a substantial number of contractors to deliver services on base, such as catering and cleaning.
- 77 Mandating vaccination for the Armed Forces would recognise the need for the NZDF to be able to undertake its core functions (such as supporting local communities through activities such as search and rescue assistance, building bridges, providing medical/dental services and training and education programmes for vulnerable youth), as well as being ready to respond to a significant local or national emergency.
- 78 The proposed vaccination mandate would extend to 9,685 Regular Force and 2,887 Reserve Force members, as well as the 2,990 (FTE) civilian roles and contractors (variable, but up to 1,000 people).
- 79 Of these, only 157 members of the Regular Force remain unvaccinated following the inclusion of the COVID-19 vaccination in the baseline vaccination requirements. Members of the Regular Force, and Reserve Force must adhere to this to meet individual readiness requirements.
- 80 Up to 600 civilian employees may be unvaccinated. However, it is likely that some of this number are vaccinated, but have not shared their vaccination status with the NZDF. The vaccination status of contractors is unknown.
- 81 The NZDF also supports similar exemption provisions as in the current Vaccinations Order. However, the NZDF notes that where a member of the Armed Forces cannot be vaccinated for medical or other acceptable reasons, they may still be subject to a review of Service, which may lead to discharge from the Armed Forces.

New Zealand Defence Force comment

- 82 The NZDF supports the approach of including both Armed Forces and civilian staff/contractors in the mandate as this represents the most comprehensive risk mitigation strategy to protect the ability of the NZDF to be prepared to respond to incidents and emergencies.
- 83 Of note, the Chief of Defence Force has issued a directive (effective from midnight Sunday 21 November) that vaccination is required to access Auckland region Defence Areas. This covers anyone accessing these Defence Areas (including third party visitors), with some exemptions such as children under 12, and dependents or spouses of members/civilians who

reside in the Defence Area. The NZDF considers that both a mandate on personnel doing work and to access Defence Areas is the best way to mitigate health and safety risks and meet its obligations under the Health and Safety at Work Act 2015 (HSWA), as well as achieve force protection and preservation in the context of the current Delta outbreak in the region.

Mandating vaccination for overseas market access

84 On 26 October 2021, we agreed to allow for a future vaccination mandate to preserve access to overseas export markets. This has been reflected in the drafting of the COVID-19 Response (Vaccinations) Legislation Bill. At this stage, I do not propose using this power Legal professional privilege

[Redacted text]

Details of the proposed Order

85 The current Vaccinations Order covers work in MIQ facilities, at the border, in the health and disability sector, the education sector and in prisons. The proposed new Order will cover the police and defence work defined in previous sections, and can be made after the COVID-19 Response (Vaccinations) Legislation Bill comes into force.

86 For work covered by any new Order, the Bill will place the following duties on workers and PCBUs:

86.1 PCBUs must keep vaccination records for workers doing work covered by the order, and prevent workers from doing that work if they are not vaccinated (or have an exemption).

86.2 Workers must not do work covered by the order unless they are vaccinated (or have an exemption), and must give information about their vaccination status to their PCBU. A failure to provide this information will not attract a penalty, but will result in a worker being presumed to be non-vaccinated, and could result in employment consequences.

87 In addition, I propose that the Order will:

87.1 Provide for exemptions approved by the Director-General of Health on medical grounds, in line with clause 9B of the current Vaccinations Order.

87.2 Provide for the Director-General of Health to authorise workers who are not fully vaccinated to carry out specified work, in line with clause 9A of the current Vaccinations Order.

87.3 Enable the chief executive (ie the Police Commissioner or Chief of Defence) to authorise exemptions in line with clause 9 of the current

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Vaccinations Order, namely where the work is unanticipated, necessary and time-critical and cannot be carried out by a person who is vaccinated, and must be carried out to prevent the ceasing of operations.

- 87.4 Enable the Minister for Workplace Relations and Safety to grant exemptions to prevent significant disruption to essential services, in line with clause 12A of the current Vaccinations Order.
 - 87.5 Enable unvaccinated workers to enter any place covered by the order without approval if they need to enter to preserve or protect a person's life, health, or safety in an emergency.
- 88 For clarity, where there is any conflict or inconsistency between the current Vaccinations Order and the new one, the existing Vaccinations Order will override the new order unless otherwise specified in the proposed Order.

Timing of vaccination requirements

- 89 The COVID-19 Response (Vaccinations) Legislation Bill will be passed by the end of November. PCO have indicated they can then prepare the new order by 13 December 2021.
- 90 I recommend that a first dose for both affected Police and NZDF personnel is required by 17 January 2022, and a second dose is required by 1 March 2022. This will avoid any potential workforce issues over the upcoming holiday period, when we are expecting a higher level of people movement amid the transition to the COVID-19 Protection Framework. This period will require Police and NZDF to continue playing key roles in enforcing restrictions as part of our overall public health response.
- 91 Some members of the constabulary have been determined to be captured by the current Vaccinations Order due to the work they do in schools and around health professionals. However, Police have advised that it is difficult to determine which police officers are covered by the mandate for workers who work closely alongside health practitioners.
- 92 Under the current Vaccinations Order, affected Police employees must have received their first dose by 29 November 2021. To avoid confusion and the varied application of mandates amongst the constabulary and other affected Police staff, it is recommended that the current Vaccinations Order be amended to:
 - 92.1 Clarify that the Vaccinations Order requirements do not apply to constabulary, recruits or authorised officers (leaving other Police workers within coverage), and
 - 92.2 Extend the deadline for non-constabulary Police workers covered by the education and health and disability sector mandates (for example, health practitioners employed by New Zealand Police) to match the dates for the proposed new Order.

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- 93 In relation to the NZDF, the vast majority of members of the armed forces are already vaccinated in line with the individual readiness requirements, which are set by the Chief of Defence Force.

Public Service Commission work to support the remainder of the public service

- 94 Te Kawa Mataaho Public Service Commission has considered other mechanisms to address the challenges posed by unvaccinated workers in the Public Service. Te Kawa Mataaho will prepare guidance for Public Service agencies on workforce matters for operating under the COVID-19 Protection Framework. This will include guidance on maintaining delivery and access to public services and managing vaccination issues in the workplace. The new guidance will build on the existing expectation that Public Servants be vaccinated against COVID-19.

A tool to guide PCBU decisions about vaccination

- 95 Vaccination is the best control available to employers, PCBUs and workers to manage risks associated with COVID-19 in the workplace. In recent weeks, workplace conversations about the role of vaccination in mitigating these risks have accelerated.
- 96 Separate to vaccination requirements in law, PCBUs can require vaccination if a risk assessment (undertaken in consultation with workers and their representatives) indicates it is a reasonably practicable measure to mitigate risk. WorkSafe has provided guidance for determining whether work needs to be performed by vaccinated employees.
- 97 PCBUs that I have spoken to and employer groups such as BusinessNZ have indicated that some PCBUs do not consider that they have, or have easy access to, the public health knowledge and health and safety expertise to be able to carry out a risk assessment. This means they don't feel they can be confident that the outcome (and therefore the actions they take as a result) meets legal requirements, and properly manages the risk to their staff and customers of contracting COVID-19. PCBUs are also concerned that any vaccination requirement they impose after undertaking a risk assessment may carry high levels of legal risk.
- 98 We have agreed to create a simple and understandable vaccination assessment tool. This will be contained in regulations under the COVID-19 Act. This tool will help PCBUs to assess whether requiring vaccination is reasonable to mitigate the risk of the exposure and transmission of COVID-19. The tool can also be used by volunteer and community organisations even if they do not have HSWA obligations.
- 99 As our knowledge of COVID-19 and how it spreads increases, the tool may need to be amended. If this is the case, the regulations will need to be updated.

Content of the tool

100 The Ministry of Business Innovation and Employment (MBIE) has engaged with public health officials from the Ministry of Health and with WorkSafe on the content of the tool. I propose that the vaccination assessment tool include three public health-related factors, and a factor relating to providing services to vulnerable people, to assess whether it would be reasonable for a PCBU to consider requiring vaccination, as set out below:

Lower risk	Higher risk
What type of environment does the worker work in?	
100m ² indoor space or greater, or outside	Less than 100m ² indoor space
How close does the person work to other people?	
At least 1 metre apart	Less than 1 metre apart
How long is the worker in proximity to other people?	
15 minutes or less	More than 15 minutes
Does the worker provide services to people who are vulnerable to COVID-19?	
No	Yes

- 101 The three public health-related factors accord with the World Health Organisation’s high-level advice on the factors that increase the risk of the exposure and transmission of COVID-19.
- 102 Including vulnerable people as a factor to consider under the tool is within the scope of the COVID-19 Act as its purpose is to support a public health response to COVID-19 by mitigating the potential adverse effects of COVID-19.
- 103 I consider it is important to include this as a factor to ensure that we are protecting those who are not or cannot be vaccinated, or who may be more significantly impacted by COVID-19. This is consistent with the approach we have taken in our COVID-19 response to date and with WorkSafe’s existing guidance on deciding what work should be undertaken by a vaccinated worker.
- 104 I propose that vulnerable people be defined as people who are:
- 104.1 under the minimum age to be vaccinated;
 - 104.2 medically exempt from being vaccinated; or
 - 104.3 at higher risk of severe illness from COVID-19.
- 105 The Unite Against COVID-19 website has a section that sets out who is at higher risk of severe illness if they contract COVID-19. Supporting guidance will refer to this. PCBUs may have information about who falls within this group so they will need to use their judgment. It also means that most PCBUs

dealing with members of the public are likely to consider themselves as providing services to vulnerable people.

- 106 I am proposing that, where the tool is employed, the threshold for requiring vaccination be three out of four factors. The Ministry of Health considers that any workplaces not subject to a government vaccination mandate are generally lower risk and it is therefore important that the three higher risk public health-related factors need to be present in order for a workplace to present higher risk and for a vaccination requirement to be considered reasonable. Where a worker does not provide services to vulnerable people, I propose that this be the case.
- 107 The Ministry of Health considers that, even if workers provide services to vulnerable people, the three higher risk public health-related factors still need to be met (so requiring four out of four factors). This is because they consider if even one of the three public health-related factors is not met, the risk of exposure and transmission of COVID-19 is substantially decreased.
- 108 I have considered this; however, I am proposing that where a worker provides services to vulnerable people, only two of the public health-related factors would need to be met for it to be considered reasonable for a PCBU to require vaccination. The rationale for this is that the impact of COVID-19 on vulnerable people is greater; therefore, there should be a lower risk tolerance (acknowledging that PCBUs may not be able to draw a distinction between vulnerable people and the general public in this context).
- 109 **Appendix 2** sets out illustrative examples of how particular roles would be assessed under the proposed tool.

The vaccination assessment tool should be applied to roles rather than to an entire workforce

- 110 The vaccination assessment tool is designed to be applied to particular roles within a business, rather than across the PCBU's entire workforce. During consultation some stakeholders asked for a tool that would assess an entire workforce. In effect, this would mean the highest risk role in a workforce would determine whether vaccination should be required for that the entire workforce.
- 111 I considered whether the tool should apply to an entire workforce, but on balance decided to ensure alignment with the current approach under HSWA. Some roles will be higher risk than others which will mean that a vaccination requirement may not be necessary across all roles. This will ensure that decisions on requiring vaccination are more likely to be reasonable and proportionate.
- 112 PCBUs will also need to apply the tool in good faith and undertake genuine consultation with workers and their representatives as part of that process. It will be suggested that PCBUs document their process and record results of consultation and the final decision.

- 113 PCBUs will have discretion to choose their own approach to exemptions and exceptions to a vaccination requirement (guidance will be provided on this).

It will not be mandatory to use the vaccination assessment tool

- 114 Use of the vaccination assessment tool is optional. It will not prevent PCBUs from undertaking their own health and safety risk assessments in order to reach a decision on vaccination requirements, and some have already done so.
- 115 Consultation feedback from businesses is that the availability of a simpler tool is useful. Feedback from some specialist health and safety practitioners is that the tool is too simplistic and does not follow a full health and safety risk assessment methodology (such as assessing the likelihood of a risk eventuating, the consequences, and whether other measures for managing risk could reasonably be implemented).
- 116 There will always be a trade-off between simplicity and accessibility, and technical rigour. While the tool is designed to be accessible for all PCBUs, there will be some that have the resources and desire to undertake a full risk assessment process. They should be able to continue to do this and I do not consider that it should be mandatory for PCBUs to use the vaccination assessment tool when they are deciding whether to require vaccination. This would constrain their ability to use alternative risk assessment methods under HSWA, which may be more comprehensive and better tailored to the characteristics of their workplace.
- 117 The vaccination assessment tool will be useful for smaller businesses in particular, where they may not have the resources or expertise to run a more comprehensive process but they would like clear guidance on the important factors to consider.
- 118 I have decided that PCBUs' decisions to use the vaccination assessment tool instead of another risk assessment methodology (and vice versa) should be protected from challenge. Legal professional privilege [REDACTED]. PCBUs are still required under HSWA to do what is reasonably practicable to identify and minimise health and safety risks. Employment law will also still apply and employers will need to make reasonable decisions in good faith.

WorkSafe will take an education-first approach

- 119 WorkSafe has stated they will take an education-first approach to enforcement under HSWA where a PCBU has undertaken an adequate risk assessment (which would include using the vaccination assessment tool) and has engaged effectively with workers and their representatives, so that PCBUs understand what is reasonable in the circumstances and have the opportunity to act on it.

Process for using the vaccination assessment tool

- 120 The tool provides a framework for assessing risk factors for roles within the workplace.
- 121 As mentioned above, a PCBU's decision-making in relation to the outcome of the tool will sit alongside their employment obligations and primary duty of care under HSWA to do what is reasonably practicable to identify and minimise health and safety risks. PCBUs who apply the tool in accordance with the regulations are likely to be compliant with their duties under HSWA and can have a degree of legal certainty that their decision is justifiable.
- 122 There may be situations where a PCBU has good reason to make a decision that differs from what the tool score indicates should be the outcome. For example, in consulting workers, a PCBU may discover that a very high percentage of its workers are vaccinated and that the unvaccinated workers can be redeployed.
- 123 In these circumstances, it may not be reasonable to require vaccination, even though the requisite number of factors in the tool have been met. These are the kinds of factors that a PCBU should consider under their HSWA and employment obligations in order to ensure that their application of the outcome indicated by the tool is reasonable.
- 124 Conversely, there may situations where the threshold in the tool is not met, but the PCBU decides to require vaccination, for example, where the indoor space is 97m² but two other higher risk factors are present. Where a PCBU chooses to depart from the outcome of the tool in this situation, if challenged, they will need to demonstrate a compelling alternative justification for the requirement to be vaccinated. As mentioned above, PCBUs are able to choose the risk assessment methodology that best suits their circumstances to determine whether vaccination should be required. If they consider that, in their context, further factors need to be considered to make this decision, then they are likely to use an alternative methodology to the tool to do so.

Further testing of the tool is required

- 125 MBIE officials will continue to test the application of the tool. I am seeking agreement to make any changes to the content and operation of the vaccination assessment tool during drafting of the regulations, and will report to Cabinet on these when the regulations are submitted for approval on 13 December 2021.

Privacy Commissioner comment

- 126 The Privacy Commissioner is broadly comfortable with the proposals in this paper, to the extent that they are justified by public health evidence.

Employers can require work to be done by a vaccinated worker to meet a condition imposed by a third party

- 127 There may be other situations where customers require workers of their suppliers or subcontractors to be vaccinated. For example:
- 127.1 A contract could stipulate that services or products must be provided by vaccinated workers,
 - 127.2 An employment agency could be asked to only supply vaccinated workers to a client,
 - 127.3 Only vaccinated workers may be allowed on site at a customer's workplace.
- 128 Where a third party imposes a condition on its continued engagement with an employer, and that condition is not unlawful or otherwise in breach of any contracts or agreements between the parties, an employer must meet that condition if they want to retain the business.
- 129 An employer is entitled to make decisions and structure their business so they can meet client requirements. To this extent, it would be lawful for an employer to require that workers assigned to work with particular clients must be vaccinated where the client has made this a condition of continued engagement. Such a condition is outside an employer's control and is not contingent on the employer's own health and safety risk assessment.
- 130 Only those workers required to engage directly with clients who have imposed such a condition would need to be vaccinated. An employer would then need to consider whether they could reorganise their operations so that unvaccinated employees only work with clients where this is not a requirement. If this was not possible, following a fair process, an employer could potentially terminate an employee's employment agreement for failing to meet an essential condition of the role. In some instances, depending on how redundancy is defined in any applicable employment agreement, this could arguably give rise to a redundancy situation.
- 131 MBIE will prepare guidance that clearly sets out what an employer is able to do, and what process should be followed, where a third party places a vaccination requirement on them.

Implementation

Proposed vaccination order

- 132 MBIE will work with New Zealand Police and the NZDF, as well as PCO, to develop the proposed Order.
- 133 Once the Order is made, it is expected that New Zealand Police and the NZDF will assume responsibility for ensuring that their respective workforces adhere to the vaccination requirements. This includes:

IN CONFIDENCE

133.1 Establishing a way to gather and record vaccination information of workers appropriately and securely, noting that both organisations are already capturing this information across their full respective workforces, and

133.2 Establishing an appropriate process to manage any exemption requests.

Vaccination assessment tool

- 134 Guidance material and tools for the vaccination assessment tool will be available through the usual channels (e.g. Unite Against COVID-19, Employment New Zealand and Business.govt.nz) and contact centres. It is likely that the publication of the tool will lead to workers encouraging their PCBUs to use it, and I intend to work with unions and business groups to ensure all parties are well-supported when the tool is introduced.
- 135 There will also be proactive engagement following these changes that will focus on Māori and Pacific communities, disabled people, migrants and the digitally disadvantaged. This work will be delivered through translated material, offline advertising and community engagement. Stakeholder networks will be asked to share key messages so that people receive accurate information from trusted advisors, friends and families.
- 136 The CTU and BusinessNZ have also emphasised the importance of industry-level conversations to ensure consistent approaches are taken across workforces, and to protect against unfair outcomes for any groups.
- 137 WorkSafe's focus will be on the process followed by PCBUs, rather than the decision that the PCBU has come to as part of that process. WorkSafe will take an education-first approach to concerns raised that a PCBU's process didn't include adequate consultation with workers.
- 138 WorkSafe will promote use of the tool, and appropriate process to support it, on its website and in its inspectors' discussions with PCBUs.
- 139 Te Puni Kōkiri have also suggested the following be explored when introducing the tool, to address any concerns PCBUs may have about applying the tool in a way that supports employees' mana and provides for their whānau if they choose not to be vaccinated. The guidance material accompanying the tool therefore needs appropriate and adaptive Māori-centric messaging, including bilingual information to support Māori employers to support their employees to get vaccinated. This could be accompanied by showcases of Māori business leaders and employers using the tool, to address vaccine hesitancy and misinformation. I have asked officials to explore these options during implementation.

Review

- 140 MBIE intends to review the proposals covered in this paper after they are implemented. This will help understand the effect of these measures, and

provide more information about how long they are likely to be required as part of our pandemic response.

- 141 In addition, the duration of these proposals is linked to the lifespan of the COVID-19 Public Health Response Act 2020. The COVID Act is currently being amended to be repealed on 13 May 2023, meaning that any Orders made under the Act will also be revoked at the point, unless repealed earlier.

Financial implications

- 142 The proposals in this paper are not expected to have direct financial implications for the Crown in terms of significant implementation costs.
- 143 The Government currently provides specific economic support for individuals who have to self-isolate due to COVID-19 exposure or testing (ie the Leave Support Scheme and Short-Term Absence Payment, respectively). Initiatives that increase vaccination rates, such as mandatory vaccination, may lessen the need for formal directions to self-isolate due to COVID-19. This may mean the need for Government economic support will reduce over time and could eventually become redundant.
- 144 Welfare support may be sought by employees whose employment is terminated because they are not vaccinated, and their job requires vaccination. The Ministry of Social Development has advised the 13-week stand-down period would not apply to such applicants. As more employers either use the vaccination tool or determine vaccination requirements through alternative health and safety assessment processes, it is likely more work across the economy will be subject to vaccination requirements. There is a risk this could increase pressure on welfare support in the short term until alternative work is found for individuals or there is a broader relaxation of vaccination requirements in future stages of the pandemic, if this proves feasible.
- 145 Within the public service, other workforces subject to a vaccination mandate are reporting some loss of workers as the first dose dates are being reached, and it could therefore be expected that some affected police and defence workers elect to remain unvaccinated and will therefore be unable to work in their current roles. However, this number is expected to be very small amongst the two workforces, and not all will necessarily access welfare services.

Legislative implications

- 146 The proposals in this paper will be given effect through an order and regulations made under the COVID-19 Public Health Response Act 2020, after the COVID-19 Response (Vaccinations) Legislation Bill is passed.

Vaccination mandates

- 147 Additional Government mandates proposed in this paper will be done through an Order. PCO have advised that this Order can be prepared by 13 December 2021 at the earliest.
- 148 An amendment is also currently being drafted to the current Vaccinations Order to require vaccination for work in settings where CVCs must be used to operate or operate with fewer restrictions [CAB-21-MIN-0436].

Vaccination assessment tool

- 149 The vaccination assessment tool will be prescribed in regulations. PCO have advised that these regulations can be prepared for Cabinet approval on 13 December 2021 at the earliest.

Impact analysis

Regulatory Impact Statement

- 150 The Regulatory Impact Analysis (RIA) Team at the Treasury has determined that the proposals for “Requiring COVID-19 vaccination for work through Government mandates and employer decisions” are exempt from the requirement to provide a Regulatory Impact Statement. The exemption is granted on the grounds that the proposals are intended to manage, mitigate or alleviate the short-term impacts of the declared emergency event of the COVID-19 pandemic, and implementation of the policy is required urgently to be effective (making complete, robust and timely Regulatory Impact Statements unfeasible).
- 151 The RIA Team strongly supports MBIE’s proposed testing of the assessment tool and the review of the proposals after their implementation, given the significance of potential impacts.

Climate Implications of Policy Assessment

- 152 Climate Implications of Policy Assessment requirements do not apply to the proposals in this paper.

Population implications

- 153 The main population impact stems from the potential requirement for workers to be vaccinated to do certain work – both as part of the Government mandate and Vaccination Assessment Tool.
- 154 Māori and Pacific peoples are already disproportionately experiencing the social and economic impacts from COVID-19, which may be exacerbated further by these proposals. However, these impacts need to be considered comparative to the counterfactual, which is that in the absence of the

measures in this paper there is a higher risk of Māori and Pacific peoples getting COVID-19 and becoming unwell.

- 155 These requirements could exacerbate existing inequities in the vaccination coverage among different groups and regions. Māori, and younger age groups of Pacific peoples currently have low rates of vaccination compared with the wider population – Māori and Pacific peoples are currently 61% and 76% fully vaccinated two doses respectively, compared to 81% across New Zealand – and could be disproportionately impacted by requirements to be vaccinated to do certain work.
- 156 For example, within the New Zealand Police, as at 29 October, both Māori and Pacific staff were more likely to not have any doses listed (15.6% and 18.5% respectively) compared to all staff (12.6%). There is a risk that staff loss due to a mandate will disproportionately impact Māori and Pacific staff.
- 157 This could cause wider flow-on socio-economic impacts, particularly if vaccination requirements for work increase or become the “norm”, and it is harder for unvaccinated people to secure employment. However, as shown by the illustrative examples for the vaccination assessment tool in **Appendix 2**, there are many examples of work that do not appear to require vaccination in order to address health and safety risks (notwithstanding that more detailed or alternative methods of risk assessment may find otherwise).
- 158 There could also be impacts on disabled people who have experienced barriers in accessing vaccination. However, vaccination requirements for certain work could also increase vaccination rates within groups with lower vaccination rates as people have another reason to be vaccinated.
- 159 It is imperative that our vaccination campaign reaches these groups in time for any implementation of wider vaccination mandates. Te Puni Kōkiri has emphasised the need to build a positive, inclusive, and shared consensus towards vaccination by utilising communications and marketing campaigns, localised leadership and access to information, as well as connecting with Māori business networks and leaders to provide insight and advice. It may also be necessary to consider increasing support structures and opportunities for transition for Māori and younger Pacific workers.

Human rights

Vaccination mandates

- 160 The proposals in this paper have human rights implications. When the COVID-19 Response (Vaccinations) Legislation Bill is passed, any Order mandating vaccination for work on public interest grounds as part of our overall public health response must either not limit, or be a justified limit of BORA rights and freedoms.
- 161 Requiring vaccination for work limits BORA section 11 (the right to refuse to undergo medical treatment) and section 19 (freedom from discrimination, for example on grounds of disability or religious beliefs).

- 162 The proposals limit the right to refuse to undergo medical treatment because, faced with a choice between being vaccinated and losing their job, a person may feel compelled to be vaccinated (ie their decision to refuse may be overborne). The proposals may also limit the right to be free from discrimination in the case of individuals who have a medical reason for not being vaccinated, such as a severe allergy. This may constitute a “disability” for the purposes of section 19 of BORA. In addition, some individuals may feel their religious freedom is limited if they have to be vaccinated to continue working, contrary to their religious beliefs.
- 163 For the Government to impose limits on these rights, the outcome vaccination mandates seek to achieve must be an important one, vaccination must be linked with the outcome sought, and there must not be an alternative that restricts the rights less (such as frequent testing or wearing of PPE) but would still achieve the same objective.
- 164 There is a prima facie limit on these rights. Before making any Order, I must be satisfied that it is demonstrably justified because of a pressing objective. This objective is mitigating against the adverse effects of COVID-19 transmission and outbreaks among the Police and NZDF workforces who are a key part of our COVID-19 response. This will also mitigate the impact of COVID-19 on the communities who interact with the Police and NZDF in the course of their day-to-day roles enforcing COVID-19 restrictions, particularly in the context of an anticipated rise in COVID-19 cases in communities.
- 165 Central to this reasoning is the risk that an unvaccinated person becomes infectious and may carry a high viral load. The unvaccinated person can then become a vector for transmission, both into communities and among their workforce. This threatens operational readiness and capacity in Police and the NZDF, as well as risking the health and wellbeing of people who come into contact with them.
- 166 At this stage, I consider that limitations on the rights of people working in Police or the NZDF who would be covered by any mandate are justified. This is because of the strong public interest objective for such a mandate, which contributes to our overall public health response. In summary, it is in the public interest to maintain the operational capacity of these workforces so they can continue to play a critical role in our COVID-19 response, and remain prepared to respond to a wide variety of incidents and emergencies across New Zealand and internationally.
- 167 There is an apparent lack of less-restrictive alternatives to achieve these objectives. I considered whether regular testing should be permitted as an alternative to a vaccination requirement. However, testing only picks up infection after it has happened, and does not prevent or mitigate the consequences of infection. I also note testing capacity is under extreme pressure, and a testing requirement (as an alternative to vaccination) would place more stress on an already strained laboratory and testing workforce. Testing resources would be better utilised elsewhere to ensure symptomatic people are testing across the country.

- 168 The COVID-19 Response (Vaccinations) Legislation Bill will provide four weeks' paid notice for all unvaccinated employees whose employment agreements are terminated because their work requires vaccination. In addition, the Order will provide exemptions (eg for people who cannot be vaccinated).
- 169 I note, however, that the discharge of armed forces from the NZDF may be subject to different processes and entitlements under the Defence Act 1990. Redeployment opportunities in both workforces are also likely to be limited, given the nature of the work and the requirement that all constabulary, recruits and authorised officers and the Armed Forces be ready to deploy to any location and in response to a vast range of circumstances.

Vaccination assessment tool

- 170 The proposed regulations may limit a person's rights under sections 11 and 19 of BORA if they encourage, incentivise or facilitate private PCBUs to make decisions that could limit those rights. This is because these decisions have the same impact on individuals as they would if Government were to make them directly.
- 171 The purpose of the assessment tool will simply be to assist PCBUs in making decisions in relation to vaccination that they are already authorised to make under the HSWA. Therefore, the regulations that introduce the tool will not lead to decisions being made by PCBUs that they are not already authorised by primary legislation to make. Accordingly, the introduction of the regulation themselves would not limit rights under the NZBORA since the decisions that PCBUs may subsequently make in reliance on the tool that is introduced through regulations would remain the PCBUs' own under the HSWA. In the event that the regulations do limit the right to be free from compulsory medical treatment, any such limitation would be prescribed by law and necessary and proportionate to achieve the aims of ensuring workplace safety.
- 172 The purpose of the tool is to provide PCBUs with greater legal certainty in relation to deciding whether vaccination is required – employment law and HSWA obligations will continue to apply. The Bill is clear that use of the tool will assist in meeting a PCBU's primary duty of care under section 36 of HSWA.
- 173 Employment law obligations will continue to apply. We have agreed safeguards to protect employees who lose their job as a consequence of their employers' decision to restrict certain work to vaccinated workers [CAB-21-MIN-0436]. This includes a requirement for employers to provide paid notice, potentially also compensation. Employers will also be able to set exemptions for people who cannot be vaccinated for medical reasons and exceptions for workers who do not need to be subject to a vaccination requirement.
- 174 The tool will not give all PCBUs a basis to require vaccination for all work in New Zealand, as demonstrated in the illustrative examples in **Appendix 2**. Employers must comply with non-discrimination obligations under the Human Rights Act 1993 when deciding whether to implement the outcome indicated

by the tool. Employers are obliged to provide reasonable accommodation (eg by allowing people to work from home) to meet an employee's needs under the Human Rights Act unless this would unreasonably disrupt the employer's business.

Consultation

- 175 This paper was prepared by MBIE. The Ministry of Health reviewed this paper and provided specific input, including public health advice. Crown Law advised on BORA implications.
- 176 Consulted agencies include: Crown Law Office, Department of Corrections, Department of Internal Affairs, Department of the Prime Minister and Cabinet, Fire and Emergency New Zealand, Kāinga Ora, Ministry of Foreign Affairs and Trade, Ministry of Health, Ministry of Housing and Urban Development, Ministry of Justice, Ministry for Pacific Peoples, Ministry for Primary Industries, Ministry of Social Development, New Zealand Customs Service, New Zealand Defence Force, New Zealand Police, New Zealand Search and Rescue, Office of the Privacy Commissioner, Oranga Tamariki, Parliamentary Counsel Office, Public Service Commission, Te Puni Kōkiri, Te Arawhiti, Treasury, and WorkSafe.

Ministerial consultation for vaccination mandate

- 177 Under the COVID-19 Response (Vaccinations) Legislation Bill, the Minister for Workplace Relations and Safety must consult the Prime Minister, the Minister for COVID-19 Response, the Minister of Health and the Minister of Justice before making any order requiring vaccination for work. Any other relevant Minister must also be consulted.
- 178 I confirm these Ministers have been consulted on this paper and will also be consulted before any order is made following commencement of the Bill.

Social partner views and external consultation

- 179 I have consulted the CTU and BusinessNZ on the proposals in this paper. Both organisations are supportive of vaccination requirements where it is supported by the science. They are also both supportive of an approach that will provide greater certainty and clarity for workers, employers and their representatives.
- 180 Officials talked to a wide range of stakeholders from hospitality, events, tourism, essential lifeline services, transport, primary and public sectors, including unions, representatives from Māori and Pacific businesses and community organisations, small business representatives, and representatives of religious and faith-based organisations covered by CVC requirements. This consultation was broader than the proposals in this paper, as it also involved sharing information about Cabinet's decisions announced on 26 October 2021 [CAB-21-MIN-0436] and preparing for the transition to the COVID-19 Protection Framework.

- 181 There was widespread support for mandates for workers to be vaccinated in CVC-required sectors and for there to be a simple process for employers/PCBUs to make decisions over whether vaccination should be required for particular work. Many business stakeholders expressed a preference for further mandates requiring vaccination for a wide range of work, over risk assessments requiring vaccination for particular work. This is primarily due to the higher levels of certainty and legal protections mandates would provide when an employer/PCBU takes actions with employment consequences for workers who are not vaccinated.
- 182 BusinessNZ considers that it is not clear that following the process set out in the vaccination assessment tool provides assurance that a requirement to be vaccinated will be considered reasonable if challenged.
- 183 The New Zealand Council of Trade Unions (CTU) considers that a higher degree of engagement and, greater clarity of obligations, should be required when applying the simplified process set out in vaccination assessment tool, than would be required under HSWA.
- 184 I have carefully considered this feedback and do not consider that further mandates beyond those proposed in this paper are needed at this time. I consider the vaccination assessment tool provides a sufficient degree of legal certainty and standard HSWA processes provide sufficient protections for employers to make reasonable decisions about whether vaccination should be required, and to then take actions with employment consequences when a worker is not vaccinated.
- 185 I have also consulted stakeholders on the proposals in this paper, with some specific comments mentioned in the relevant sections above. **Appendix 3** summarises the feedback received during consultation.

Te Tiriti o Waitangi implications

- 186 The principles of Te Tiriti o Waitangi/the Treaty of Waitangi require that the Crown be properly informed of the Māori interests and to act reasonably and with the utmost good faith towards Māori. In this context, engagement with Māori is an important part of meeting the Crown's Te Tiriti obligations.
- 187 COVID-19 is likely to have disproportionate effects on Māori due to a range of factors, including underlying health conditions and lower vaccination rates. It is important that the appropriate domestic settings are in place and developed in consultation with Māori. A key factor is to ensure healthcare, wraparound support services and facilities are provided that are appropriate to the specific situations Māori face.

Implications of the current proposals

- 188 Mixed feedback was received from Māori stakeholders, with some support for certainty over where vaccination should be required for particular work and the processes for determining this. There was also some support for broader vaccination mandates (noting many Māori businesses are small-medium

sized business providing services, where clients may be requiring vaccination). However, concerns were also raised about the impacts on Māori businesses if they are not able to operate fully due to having unvaccinated workers.

- 189 The vaccination mandate proposals will improve Māori health outcomes compared to other groups, because of the higher vulnerability of the Māori population to COVID-19. On the other hand, Māori could be disproportionately impacted by requirements to be vaccinated to do certain work because of current low rates of vaccination compared with the wider population. To mitigate against this, there will be exemptions for people who medically cannot be vaccinated.
- 190 Further employer or Government-mandated vaccination requirements for workers may incentivise some to get vaccinated in advance of vaccination requirements coming into effect. This will require cooperation between sector organisations, unions and iwi and kaupapa Māori organisations to support workers to be vaccinated. Legislative changes to increase paid time off work to get vaccinated will help increase the opportunity for this. Employers will need to consider all alternatives that could preserve an employment relationship, such as reorganising work. The requirement for employers to provide minimum paid notice also helps to protect workers who lose their job as a consequence of a Government-imposed vaccination mandate or employer decisions to restrict certain work to vaccinated workers [CAB-21-MIN-0436].

Communications

- 191 Communications on the proposals in this paper will be agreed with the Office of the Prime Minister.

Proactive release

- 192 I intend to proactively release this paper following Cabinet consideration.

Recommendations

The Minister for Workplace Relations and Safety recommends that Cabinet:

Vaccination mandates

- 1 **note** that on 26 October 2021, Cabinet agreed to amend the COVID-19 Public Health Response Act 2020 (COVID Act) to allow vaccination or testing to be required for work on public interest grounds [CAB-21-MIN-0436];
- 2 **note** that Cabinet also invited the Minister for the Public Service, the Minister for Economic and Regional Development and the Minister for Workplace Relations and Safety to consider whether to mandate vaccination for any other types of work [CAB-21-MIN-0436];

3 **note** that public health advice is that further mandates based solely on public health grounds are not currently justifiable;

4 Legal professional privilege

5 **note** that analysis of workforces for which a mandate may be justified has identified that it is in the public interest, within the overall context of our public health response to COVID-19, to mandate vaccination for some Police and New Zealand Defence Force personnel, due to their role in the COVID-19 response, ensuring public safety and maintaining trust and confidence in public services;

6 **agree** to mandate vaccination for work done by:

6.1 New Zealand Police constabulary, Police recruits and authorised officers employed by Police

6.2 the Armed Forces and civilian staff (including contractors) of the New Zealand Defence Force;

7 **note** that, if the above recommendation is agreed, the Minister for Workplace Relations and Safety will make an Order requiring vaccination according to recommendation 6 after the COVID-19 Response (Vaccinations) Legislation Bill is passed;

8 **note** that the proposed Order will replicate the exemption provisions of the COVID-19 Public Health Response (Vaccinations) Order 2021, with any necessary modifications;

9 **note** that the proposed Order would likely be made around 13 December 2021;

10 **note** the date for requiring a first dose under the proposed Order is 17 January 2022, and second dose will be required by 1 March 2022;

11 **note** that some constabulary are covered by the COVID-19 Public Health Response (Vaccinations) Order 2021 for education and health and disability work, with a current first dose deadline of 29 November 2021;

12 **agree** to amend the COVID-19 Public Health Response (Vaccinations) Order 2021 to:

12.1 clarify that it does not apply to constabulary, recruits or authorised officers of the New Zealand Police, and

12.2 extend the deadline for affected non-constabulary Police workers to match the dates for the proposed Order.

13 **note** that the baseline vaccination requirements set by the New Zealand Defence Force includes COVID-19 vaccination for members of the Armed

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Forces, and a high vaccination rate has thus been achieved, although this requirement is currently the subject of judicial review;

- 14 **note** that both New Zealand Police and the New Zealand Defence Force consider that, to be effective from a risk mitigation perspective, the proposed Order should cover other work critical to their respective functions, for example police communications functions and defence engineering;
- 15 **note** that while there is widespread interest in mandating vaccination for other work in the public interest, after analysis and consultation between Ministers, it is currently not necessary to mandate vaccination for any other workforces;

Vaccination assessment tool for employers

- 16 **note** that Cabinet previously agreed to issue drafting instructions to amend the COVID-19 Act to introduce regulation making powers to prescribe a risk assessment process to determine when employers can require vaccination [CAB-21-MIN-0436];
- 17 **note** that use of the vaccination assessment tool is optional and will not prevent PCBUs from undertaking their own health and safety risk assessments in order to reach a decision on vaccination requirements;
- 18 **note** that PCBUs must consult workers and their representatives when using the vaccination assessment tool and when considering control measures;
- 19 **note** that where a PCBU has chosen to use the vaccination assessment tool to decide whether vaccination is required, they cannot be required to use a different risk assessment methodology to make that decision;
- 20 **agree** that the vaccination assessment tool specify the following factors that should be included in the tool:

<i>Lower risk</i>	<i>Higher risk</i>
What type of environment does the worker work in?	
100m ² indoor space or greater, or outside	Less than 100m ² indoor space
How close does the person work to other people?	
At least 1 metre apart	Less than 1 metre apart
How long is the worker in proximity to other people?	
15 minutes or less	More than 15 minutes
Does the worker provide services to people who are vulnerable to COVID-19?	
No	Yes

- 21 **agree** that the definition of vulnerable people is those who are:
 - 21.1 under the minimum age to be vaccinated;

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21.2 medically exempt from being vaccinated; or

21.3 at higher risk of severe illness from COVID-19;

22 **agree** that at least three of the four higher risk factors in the vaccination assessment tool, set out in recommendation 20 above should be present in order for it to be reasonable for a PCBU to require vaccination for work;

23 **note** that the vaccination assessment tool is designed to be applied to particular roles rather than to an entire workforce;

Third party requirements

24 **note** that if a third party imposes a condition on an employer that the employer's workers must be vaccinated to deliver services to the third party, or access the premises of the third party, the employer can require workers doing that work to be vaccinated;

25 **note** I do not consider any change necessary to the current position in law set out in recommendation 24 above;

Approve drafting of legislation

26 **note** the proposals in this paper will be given effect through secondary legislation under the COVID-19 Public Health Response Act 2020 after the COVID-19 Response (Vaccinations) Legislation Bill is passed;

27 **invite** the Minister for Workplace Relations and Safety to issue drafting instructions to Parliamentary Counsel Office giving effect to the policy decisions in this paper;

28 **authorise** the Minister for Workplace Relations and Safety to make decisions on any issues that arise during the drafting process;

Communications

29 **note** that an appropriate communications plan will be developed and agreed with the Office of the Prime Minister.

Authorised for lodgement

Hon Michael Wood

Minister for Workplace Relations and Safety

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Appendix 1: Decisions made during drafting

COVID-19 Response (Vaccinations) Legislation Bill

In accordance with Cabinet's agreement to authorise the Minister for Workplace Relations and Safety, in consultation with the Minister for COVID-19 Response, to make any decisions that arise during the drafting process, I have made the following decisions on matters to be included in the Bill [CAB-21-MIN-0436 refers].

Orders mandating vaccination for work in the public interest

Orders made under section 11 of the COVID-19 Public Health Response Act 2020 will prevail over orders made under the new section 11AC (the new public interest order-making power), unless otherwise specified in an order made under section 11AC.

Vaccination assessment tool

A PCBU may choose to use any prescribed assessment tool but does not need to.

A PCBU's decision to use any assessment tool prescribed in regulations instead of another risk assessment methodology is protected from challenge (but not their actual use of the assessment tool prescribed in regulations in terms of process or outcome).

Amendments to COVID-19 Public Health Response (Vaccinations) Order 2021

These relate to our decision to require vaccination for work in settings where COVID-19 Vaccination Certificates (CVCs) must be used to either operate or operate with fewer restrictions under the COVID-19 Protection Framework at the Orange and Red Levels [CAB-21-MIN-0436 refers]. These will be given effect by amendments made by the Minister for COVID-19 Response.

Decisions made

The vaccination mandate for work in these settings will also apply at the Green level, in addition to Orange and Red.

Workers covered by this mandate need to have had one dose to continue working when the COVID-19 Protection Framework comes into effect in their region, and two doses by 17 January 2021.

A similar approach to exemptions will be taken as under the Order, with the Chief Executive of the Ministry of Business, Innovation and Employment deciding exemptions under clause 9 (for work that is unanticipated, necessary, time-critical, cannot be carried out by a vaccinated person, and is needed to prevent the ceasing of operations).

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PCBUs are responsible for collecting and storing information about workers' vaccination status, with access to Ministry of Health records in clause 11 or the centralised vaccination register in clause 12.

Appendix 2: Illustrative examples of how work could be assessed under the proposed tool

Example occupations		What type of environment is the work performed in?	How close does the person work to other people?	How long is the worker in contact with other people?	Does the work require the worker to provide services primarily to vulnerable people?	Overall score	Is it reasonable to consider requiring vaccination?
Occupation	Description	100m ² indoor space or greater, or outdoors (0) or less than 100m ² indoor space (1)	At least 1m apart (0) or less than 1m apart (1)	15 minutes or less (0) or more than 15 minutes (1)	Under minimum age to be vaccinated; or medically exempt; or at higher risk of severe illness from COVID-19		
Forestry harvester	A forestry harvester spends the majority of their day outside in the forest where they do not interact regularly with other people. To get to and from work, they use a shared van with colleagues. While it's a confined space, they are able to ensure physical distancing, however, the drives can be over an hour each way.	1	1	1	0	3	Yes
Builder	A builder works on a large commercial construction site which is currently open air. The builder consistently works in close physical contact with colleagues.	0	1	1	0	2	No
	A builder specialises in kitchen and bathroom renovations. This means they work in confined spaces, often alongside other tradespeople.	1	1	1	0	3	Yes
Meat packer	A meat packer works full time at a local plant. The area they work in is 83m ² and involves being close with their colleagues for extended periods of time. There is limited ability for physical distancing to be maintained.	1	1	1	0	3	Yes
Truck driver	A truck driver works shift work transporting goods between Auckland and Wellington. They usually work alone and have limited contact with other people. Their truck cabin is a confined space.		0	1	0	2	No
Librarian	A librarian works part-time at a local council library that is part of a wider complex, of which is 3,065m ² . The librarian is often out on the 'floor' with customers for short periods of interaction, while maintaining a physical distance.	0	0	1	1	2	No
Front counter bank staffer	A front counter bank staffer works part-time at a local bank. The job involves a mixture of front office support for customers, while also working in the back office from time to time. The back-office workspace is 72m ² . They interact with multiple customers a day and are able to physically distance themselves.	1	0	1	1	3	Yes
Real-estate agent	A real-estate agent works full-time between their office, which is 78m ² , and home. They spend multiple hours a day meeting with clients, including visiting private homes and driving clients in their car. These meetings are a minimum of half an hour and can be multiple hours when visiting homes. They are operating open homes on a booking system.	1	0	1	1	3	Yes

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Example occupations		What type of environment is the work performed in?	How close does the person work to other people?	How long is the worker in contact with other people?	Does the work require the worker to provide services primarily to vulnerable people?	Overall score	Is it reasonable to consider requiring vaccination?
Occupation	Description	100m ² indoor space or greater, or outdoors (0) or less than 100m ² indoor space (1)	At least 1m apart (0) or less than 1m apart (1)	15 minutes or less (0) or more than 15 minutes (1)	Under minimum age to be vaccinated; or medically exempt; or at higher risk of severe illness from COVID-19		
Economist	An economist works full-time in an office that is 206m ² . Within the office there is enough space for colleagues to be socially distanced. The job is primarily desk based, with a few client meetings scattered across the week. These client meetings are usually half an hour to an hour.	0	0	1	0	1	No
Motel receptionist	A hotel receptionist works full-time at a small motel. The front office space is 68m ² . They interact with customers regularly throughout the day for short periods of time, while maintaining a physical distance.	1	0	0	1	2	No
Nanny	A nanny works part-time for one family with two young children. As well as providing at home care, they also are responsible for taking the children to school and various activities in a vehicle. They spend extended periods of time with the children, in close contact where it is not possible to maintain a physical distance.	1	1	1	1	4	Yes
Bus driver	A bus driver who works on different routes in the Wellington region.	1	0	1	1	3	Yes
Front line family social worker	Works with families that have children younger than 12, often meets them in their homes or transitional housing (which can be motel units).	1	1	1	1	4	Yes
Support worker at social service provider	Works in a small city office providing advice by phone and face-to-face to those seeking social service support.	1	0	1	1	3	Yes
Shelf stacker in a supermarket	Stocks shelves in a supermarket during the day when customers are present	0	1	0	1	2	No
Retail worker	Serves customers in a small boutique clothing shop targeting older women. Work requires them to be on the floor and assist customers.	1	0	1	1	3	Yes
	Directs the queue at the self-service checkouts at a large national retailer.	0	0	0	1	1	No
Livestock farmer	A livestock farmer works on a large dairy farm. They spend the majority of their day outside where they do not interact regularly with other people. To get to and from work, they use a shared van with colleagues. While a confined space, they are able to ensure physically distancing and the drives are short distances.	1	0	0	0	1	No

Appendix 3: Feedback from stakeholder engagement

	Like	Wish	Worry
<p><i>Vaccination mandates and CVCs</i></p> <p><i>(note this includes general feedback about CVCs)</i></p>	<ul style="list-style-type: none"> Broad support for a mandate where work in places where CVCs must be used, citing practical difficulties of having to navigate employment issues otherwise. There is a preference for mandating vaccination for work in CVC areas at the Green level, recognising that some businesses and services may choose not to require CVCs from customers. Mandating vaccination for work is accepted as it is the “simplest” approach. 	<ul style="list-style-type: none"> Definitions need to be really clear for certainty and simplicity. Accommodation sector needs to be included in the COVID Protection Framework (generally viewed as connected to Hospitality). Clarity is needed on the approach where a premise contains a mix of CVC required areas, CVC prohibited areas and CVC optional areas. There was protection against litigation by unvaccinated customers who want full access to facilities and/or services. 	<ul style="list-style-type: none"> How will business manage angry customers who want access but can’t as they’re unvaccinated. How to practically sight and scan identification and CVCs – will IDs (eg Drivers Licences) need to be sighted, is point of entry verification needed.
<p><i>Further Government vaccination mandates</i></p>	<ul style="list-style-type: none"> Mandates provide certainty for employers/PCBUs. They are the easiest way to require vaccination in the workplace. They remove the need for difficult workplace discussions and take pressure off union delegates and health and safety representatives. 	<ul style="list-style-type: none"> Broad support for mandates and broad business/PCBU views about what is in the public interest (much wider than public health considerations). Different view on principles for Government mandates: <ul style="list-style-type: none"> Where there is a public health risk and relying on PCBU risk assessments could create inconsistencies. Where large workforces are interacting with varied/uncontrolled members of the public. Based on public health science. Mandates will need a fair and thorough implementation process, featuring tripartite conversations at an industry level to smooth implementation. Mandates should extend to contractors as well as employees. 	<ul style="list-style-type: none"> Concerns about social licence if mandates go too far or are not based on clear principles. Need to keep mandates under regular review to ensure they remain appropriate amidst changes in our overall context. Difficulties in limiting vaccination mandates to particular groups/parts of the workforce - where do you draw the line? How will mandates be enforced? How to record and store vaccination data safely.
<p><i>Mandates for overseas market access</i></p>	<ul style="list-style-type: none"> Support vaccination for market access reasons. Like the process being managed by the Director-General of the Ministry for Primary Industries. Like an “opt in” process. 	<ul style="list-style-type: none"> There shouldn’t be a threshold to qualify as an “exporter”. Trade volumes can vary and volume doesn’t always equal high value. It must be clear and easy for our trading partners to understand. The mandate should go all the way down the supply chain. Mandate should extend to all persons entering a site. 	<ul style="list-style-type: none"> Mandates exacerbating current labour force issues. An “opt in” process could be confusing for trade partners.
<p><i>Vaccination assessment tool</i></p>	<ul style="list-style-type: none"> Overall the balance of preference is for the points-based option as it has more detail and granularity. The points-based option is a simple and “good starting point”; businesses would find it useful. The check box option is easy to use and simple. Consultation with employees, health and safety representatives and unions as part of the assessment process was supported. 	<ul style="list-style-type: none"> The tool needs to be based on public health advice and science. Language in the tool needs to be clear and unambiguous. The tool needs guidance to support it. The tool should align to ISO standards for risk assessments, including consideration of risk and consequence, controlled and uncontrolled. The assessment should be across an entire workplace/workforce, rather than by role or types of work. Make it clear that this tool only relates to the decision about whether work requires vaccination. PCBUs also need to follow their normal health and safety processes for other controls. Consider factors such as ventilation, high touch points, more detail on work environment, humidity, worker intermingling, contact with vulnerable people, contact with colleagues where a vaccination mandate applies. Worker engagement should be wider than just with health and safety representatives. 	<ul style="list-style-type: none"> The options aren’t sufficient for large organisations – not enough nuance. The check box option is too blunt, black-and-white or oversimplified and not dynamic. Health and safety representatives and union delegates could become the meat in the sandwich between employers and anti-vax colleagues during the assessment process. The tool doesn’t include consequence or distinguish between controlled and uncontrolled risk. The only control that minimises the consequence of contracting COVID-19 is vaccination, and this should be included. The process isn’t static and the requirement for vaccination should be assessed regularly.
<p><i>Third party access and undue disruption</i></p>	<ul style="list-style-type: none"> Acknowledgement that third party private property rights should be respected. 	<ul style="list-style-type: none"> Where there are multiple PCBUs on site, there needs to be clarity about whose risk assessment takes precedent. 	<ul style="list-style-type: none"> Requiring vaccination for business disruption conflates health and safety with economic reasons.